THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20751 of 1995

DATED: 26-12-2006

Between:

A.P.State Construction Corporation Ltd.,

Khammam

And two others.

… Petitioners.

And

S.Yakub and others.

… Respondents.

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20751 of 1995

ORDER:

In this writ petition the order of the Industrial Tribunal-cum-Labour Court, Warangal passed in E.P.No.34 of 1991 dated 19.11.1994 is questioned.

Respondents 1 and 2 were engaged by the first petitioner, A.P. State Construction

Corporation Limited, Khammam (for short “the Corporation”) as NMRs on daily wage basis in the year 1977 and they were allowed to work upto 6.8.1979 as Winch Operators. Their services were terminated with effect from 6.8.1979. They along with 46 others raised industrial dispute registered as I.D.No.304 of 1986 before the Industrial Tribunal-cum-Labour Court, Warangal (for short ‘the Tribunal’). Before the Tribunal the contention of respondents 1 and 2 was that while retaining their juniors, they were retrenched thereby violating the principle ‘last come first go’. The Tribunal without adjudicating the said issue disposed of the I.D., with certain directions. It is relevant to note in this context that during the pendency of the said ID the first petitioner Corporation was taken over by the Government therefore petitioners 2 and 3 came on record. The directions given in the award were to the effect that the first petitioner shall decide after hearing all the parties whether juniors to respondents 1 and 2 and other similarly situated persons were retained while retrenching the latter. If the answer is in the affirmative, respondents 1 and 2 and other seniors should be treated to be continuing in service in spite of retrenchment and regularize their services as and when they are entitled to and fix their seniority. They shall also be entitled to enhanced wages, if any, from the date of the award.

As the petitioners failed to take follow up action in pursuance of the directions contained in the said award, the respondents 1 and 2 moved the Tribunal by way of Execution Petition No.34 of 1991. The petitioners filed a counter on 28.12.1991 wherein they have requested for grant of two months time to implement the award. As they failed to implement the award within the said time undertaken by them, the Tribunal passed an order on 5.1.1993 directing implementation of the award as sought for in the execution petition. As the petitioners further failed to comply with the said directions, the Tribunal passed orders on 16.7.1993 attaching certain properties and the said order was questioned by the petitioners in W.P.No.13876 of 1993 before this Court. The said writ petition was disposed of by directing the Tribunal to dispose of the execution petition within three months from the date of receipt of the order in the writ petition. Following the said direction of this Court, the Tribunal held enquiry and after hearing the parties before it, passed the orders impugned in this writ petition.

The Tribunal albeit the fact that the proceedings before it were only execution proceedings held a detailed enquiry in order to ascertain the fact whether the petitioners have violated the principle ‘last come first go’, by retaining the juniors and retrenching seniors. On behalf of the respondents 1 and 2, W.W.1 was examined and Exs.W1 to W.7 were marked. While no oral evidence was adduced for the petitioners, Exs.M1 to M12 were marked. After detailed consideration of the oral evidence and the material available on record, the Tribunal held that while continuing certain juniors, seniors like respondents 1 and 2 were retrenched. The Tribunal referred to the case of one K.Narayana, who was admittedly junior to respondents 1 and 2. The Tribunal in this regard relied upon the admission of M.W.1 that K.Narayana, who was working even after the retrenchment of respondents 1 and 2, was junior to respondent No.1. The Tribunal has not believed the version of the petitioners that Narayana was retrenched along with respondents 1 and 2 but was again reappointed in February 1982 as the petitioners failed to produce any record to that effect. The Tribunal further held that the petitioners deliberately suppressed the documents, which were directed to be produced by them and it has drawn adverse inference that had those documents been produced they would have definitely established that while continuing the juniors of the respondents 1 and 2, the latter were retrenched. The Tribunal also held that the burden lies heavily on the petitioners to establish the fact that they have not retained any of the juniors while retrenching the seniors and the petitioners failed to discharge the said burden.

On the strength of the aforementioned findings, the Tribunal directed reinstatement of respondents 1 and 2 and that they should be treated as continuing in service. A further direction to regularize their services as and when they are entitled to and to fix their seniority along with enhanced wages if any was given. The petitioners were also directed to file calculation memos giving the details of the back wages for which respondents 1 and 2 are entitled to as per the award.

Heard learned Government Pleader for the petitioners and Sri A.K.Jayaprakash Rao, learned counsel for respondents 1 and 2.

Learned Government Pleader submitted that the findings recorded by the Tribunal are contrary to record. He contends that the petitioners have retrenched the surplus staff strictly following the principle 'last come first go' and that none of the juniors of respondents 1 and 2 were retained while the latter were retrenched. Sri A.K.Jayaprakash Rao on the other hand supported the order of the tribunal.

Having considered the rival pleas of the learned counsel appearing for the parties, I am of the view that the findings of fact recorded by the executing Tribunal do not call for any interference by this Court exercising writ jurisdiction. The Tribunal, on the earlier occasion disposed of the industrial dispute with directions to the petitioners to decide whether they have violated the principle 'last come first go' while retrenching the surplus workmen. Since the petitioners failed to decide the said issue, the execution petition was filed which ultimately lead to the passing of the order which is under challenge. The petitioners, as observed by the Tribunal, failed to produce the relevant records despite directions given in this regard in E.A.No.117 of 1994 filed by the respondents 1 and 2 seeking production of the documents mentioned therein namely compensation receipts paid to the workmen on 6.8.1979 and the nominal muster roll of N.M.R. Winch Operators from 1.6.1976 to 6.8.1979. Neither a counter affidavit was filed by the petitioners in the said E.A. nor the documents were produced, forcing the Tribunal to pass an order, closing the E.A. with an observation that an adverse inference will be drawn against the petitioners for non-filing of the documents. The absence of the production of record coupled with the fact that admittedly one K.Narayana, who was junior to respondents 1 and 2, was continued even after the retrenchment of respondents 1 and 2 justified the Tribunal to arrive at the conclusion that retrenchment of respondents 1 and 2 was in violation of the principle 'last come first go'. The Tribunal was therefore justified in granting the relief sought for the in the E.P. The said order therefore does not suffer from any error warranting interference by this Court exercising its writ jurisdiction.

For the aforementioned reasons, the writ petition is devoid of any merit and accordingly it is dismissed.

_____

C.V.NAGARJUNA REDDY,J

Dt: -12-2006.

Mdaa.